

AMENDED IN SENATE JUNE 20, 2005
AMENDED IN ASSEMBLY MAY 16, 2005
AMENDED IN ASSEMBLY MAY 5, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 354

Introduced by Assembly Member Cogdill

February 10, 2005

An act to amend, repeal, and add Section 2290.5 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 354, as amended, Cogdill. Telemedicine.

Existing law, the Medical Practice Act, regulates the practice of telemedicine, defined as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. A violation of the provisions governing telemedicine is a crime.

This bill would, until January 1, 2009, ~~add asynchronous set forth requirements for store and forward teledermatology and teleophthalmology to the definition of telemedicine, and would limit the practice of those services to board certified dermatologists and ophthalmologists, respectively, as defined.~~ The bill would require the State Department of Health Services to, on or before January 1, 2008, report to the Legislature specified information regarding store and forward telemedicine as a Medi-Cal benefit.

Because this bill would create new requirements ~~relative to telemedicine~~, the violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 2290.5 of the Business and Professions~~
2 ~~Code is amended to read:~~
3 ~~2290.5. (a) For the purposes of this section, the following~~
4 ~~definitions apply:~~
5 ~~(1) "Telemedicine" means the practice of health care delivery,~~
6 ~~diagnosis, consultation, treatment, transfer of medical data, and~~
7 ~~education using interactive audio, video, or data~~
8 ~~communications. For purposes of this section, "telemedicine"~~
9 ~~shall also include asynchronous store and forward~~
10 ~~teledermatology and teleophthalmology services. Neither a~~
11 ~~telephone conversation nor an electronic mail message without~~
12 ~~visualization of the patient between a health care practitioner and~~
13 ~~patient constitutes "telemedicine."~~
14 ~~(2) "Interactive" means an audio, video, or data~~
15 ~~communication involving a real time (synchronous) or near real~~
16 ~~time (asynchronous) two-way transfer of medical data and~~
17 ~~information.~~
18 ~~(3) "Health care practitioner" has the same meaning as~~
19 ~~"licentiate" as defined in paragraph (2) of subdivision (a) of~~
20 ~~Section 805.~~
21 ~~(4) "Asynchronous store and forward teleophthalmology" or~~
22 ~~"asynchronous store and forward teledermatology" means the~~
23 ~~transmission of a patient's medical information from an~~
24 ~~originating site to the physician or health care practitioner at a~~
25 ~~distant site. The physician and surgeon or health care practitioner~~
26 ~~at the distant site can review the medical case without the patient~~
27 ~~being present. An asynchronous telecommunication system in~~
28 ~~single media format does not include telephone calls, images~~
29 ~~transmitted via facsimile machines, or text messages without~~

1 ~~visualization of the patient (electronic mail). Photographs~~
2 ~~visualized by a telecommunications system must be specific to~~
3 ~~the patient's medical condition and adequate for furnishing or~~
4 ~~confirming a diagnosis or treatment plan. Dermatological~~
5 ~~photographs, including a photograph of a skin lesion, may be~~
6 ~~considered to meet the requirement of a single media format~~
7 ~~under this provision.~~

8 (5) ~~"Distant site" means the site at which the physician and~~
9 ~~surgeon or health care practitioner delivering the service is~~
10 ~~located at the time the service is provided via a~~
11 ~~telecommunications system.~~

12 (6) ~~"Originating site" means the location of a patient whose~~
13 ~~medical information is being transmitted at the time the service~~
14 ~~being furnished via a telecommunications system occurs.~~

15 (b) ~~Asynchronous store and forward teleophthalmology shall~~
16 ~~be performed by a physician and surgeon who is board certified~~
17 ~~in this state to practice in the specialty of ophthalmology.~~

18 (c) ~~Asynchronous store and forward teledermatology shall be~~
19 ~~performed by a licensed physician and surgeon who is board~~
20 ~~certified in this state to practice in the specialty of dermatology.~~

21 (d) ~~A patient who receives asynchronous store and forward~~
22 ~~teleophthalmology or teledermatology services has the option to~~
23 ~~request an interactive communication with the distant specialist~~
24 ~~physician.~~

25 (e) ~~Prior to the delivery of health care via telemedicine, the~~
26 ~~health care practitioner who has ultimate authority over the care~~
27 ~~or primary diagnosis of the patient shall obtain verbal and written~~
28 ~~informed consent from the patient or the patient's legal~~
29 ~~representative. The informed consent procedure shall ensure that~~
30 ~~at least all of the following information is given to the patient or~~
31 ~~the patient's legal representative verbally and in writing:~~

32 (1) ~~The patient or the patient's legal representative retains the~~
33 ~~option to withhold or withdraw consent at any time without~~
34 ~~affecting the right to future care or treatment nor risking the loss~~
35 ~~or withdrawal of any program benefits to which the patient or the~~
36 ~~patient's legal representative would otherwise be entitled.~~

37 (2) ~~A description of the potential risks, consequences, and~~
38 ~~benefits of telemedicine.~~

39 (3) ~~All existing confidentiality protections apply.~~

~~(4) All existing laws regarding patient access to medical information and copies of medical records apply.~~

~~(5) Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient.~~

~~(f) A patient or the patient's legal representative shall sign a written statement prior to the delivery of health care via telemedicine, indicating that the patient or the patient's legal representative understands the written information provided pursuant to subdivision (a), and that this information has been discussed with the health care practitioner, or his or her designee.~~

~~(g) The written consent statement signed by the patient or the patient's legal representative shall become part of the patient's medical record.~~

~~(h) The failure of a health care practitioner to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.~~

~~(i) All existing laws regarding surrogate decisionmaking shall apply. For purposes of this section, "surrogate decisionmaking" means any decision made in the practice of medicine by a parent or legal representative for a minor or an incapacitated or incompetent individual.~~

~~(j) Except as provided in paragraph (3) of subdivision (c), or in the practice of asynchronous store and forward teledermatology and teleophthalmology, this section shall not apply when the patient is not directly involved in the telemedicine interaction, for example when one health care practitioner consults with another health care practitioner.~~

~~(k) This section shall not apply in an emergency situation in which a patient is unable to give informed consent and the representative of that patient is not available in a timely manner.~~

~~(l) This section shall not apply to a patient under the jurisdiction of the Department of Corrections or any other correctional facility.~~

~~(m) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.~~

~~(n) On or before January 1, 2008, the State Department of Health Services shall report to the Legislature the number and~~

1 ~~type of services provided and the payments made related to the~~
2 ~~application of store and forward telemedicine as a Medi-Cal~~
3 ~~benefit.~~

4 ~~(e) This section shall remain in effect only until January 1,~~
5 ~~2009, and as of that date is repealed, unless a later enacted~~
6 ~~statute, that is enacted before January 1, 2009, deletes or extends~~
7 ~~that date.~~

8 *SECTION 1. Section 2290.5 of the Business and Professions*
9 *Code is amended to read:*

10 2290.5. (a) (1) For the purposes of this section,
11 “telemedicine” means the practice of health care delivery,
12 diagnosis, consultation, treatment, transfer of medical data, and
13 education using interactive audio, video, or data
14 communications. Neither a telephone conversation nor an
15 electronic mail message between a health care practitioner and
16 patient constitutes “telemedicine” for purposes of this section.

17 (2) For purposes of this section, “interactive” means an audio,
18 video, or data communication involving a real time
19 (synchronous) or near real time (asynchronous) two-way transfer
20 of medical data and information.

21 (b) *For the purposes of this section, “store and forward”*
22 *means the asynchronous transmission of medical information to*
23 *be reviewed at a later time by a health care practitioner at a*
24 *distant site, where the health care practitioner at the distant site*
25 *reviews the medical information without the patient being*
26 *present. Medical information may include, but is not limited to,*
27 *video clips, still images, x-rays, MRIs, EKGs, laboratory tests,*
28 *audio clips, and text.*

29 (c) *For the purposes of this section, “teleophthalmology and*
30 *teledermatology by store and forward” or “store and forward*
31 *teleophthalmology and teledermatology” means an asynchronous*
32 *transmission of medical information to be reviewed at a later*
33 *time by a physician or health care practitioner at a distant site*
34 *who is trained in ophthalmology or dermatology, where the*
35 *physician or health care practitioner at the distant site reviews*
36 *the medical information without the patient being present. Store*
37 *and forward teleophthalmology and teledermatology is a medical*
38 *service separate from an interactive medical consultation, and*
39 *shall meet the following requirements:*

40 (1) *Images must be specific to the patient’s condition.*

(2) *A patient receiving store and forward teleophthalmology or teledermatology services shall be notified of the right to receive interactive communication with the distant specialist physician or health care practitioner, and, upon request, shall receive an interactive communication with the distant specialist physician or health care practitioner. If requested, interactive communication with the distant specialist physician or health care practitioner may occur either at the time of the consultation or within 60 days of the patient's notification of the results of the consultation.*

(3) *Store and forward consultation does not include telephone calls, images transmitted via facsimile machine, or electronic mail.*

(d) For the purposes of this section, "health care practitioner" has the same meaning as "licentiate" as defined in paragraph (2) of subdivision (a) of Section 805.

~~(e)~~

(e) Prior to the delivery of health care via telemedicine, the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient or the patient's legal representative. The informed consent procedure shall ensure that at least all of the following information is given to the patient or the patient's legal representative verbally and in writing:

(1) The patient or the patient's legal representative retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment nor risking the loss or withdrawal of any program benefits to which the patient or the patient's legal representative would otherwise be entitled.

(2) A description of the potential risks, consequences, and benefits of telemedicine.

(3) All existing confidentiality protections apply.

(4) All existing laws regarding patient access to medical information and copies of medical records apply.

(5) Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient.

~~(f)~~

(f) A patient or the patient's legal representative shall sign a written statement prior to the delivery of health care via

1 telemedicine, indicating that the patient or the patient's legal
2 representative understands the written information provided
3 pursuant to subdivision (a), and that this information has been
4 discussed with the health care practitioner, or his or her designee.

5 ~~(e)~~

6 (g) The written consent statement signed by the patient or the
7 patient's legal representative shall become part of the patient's
8 medical record.

9 ~~(f)~~

10 (h) The failure of a health care practitioner to comply with this
11 section shall constitute unprofessional conduct. Section 2314
12 shall not apply to this section.

13 ~~(g)~~

14 (i) All existing laws regarding surrogate decisionmaking shall
15 apply. For purposes of this section, "surrogate decisionmaking"
16 means any decision made in the practice of medicine by a parent
17 or legal representative for a minor or an incapacitated or
18 incompetent individual.

19 ~~(h)~~

20 (j) Except as provided in paragraph (3) of subdivision (c), this
21 section shall not apply when the patient is not directly involved
22 in the telemedicine interaction, for example when one health care
23 practitioner consults with another health care practitioner.

24 ~~(i)~~

25 (k) This section shall not apply in an emergency situation in
26 which a patient is unable to give informed consent and the
27 representative of that patient is not available in a timely manner.

28 ~~(j)~~

29 (l) This section shall not apply to a patient under the
30 jurisdiction of the Department of Corrections or any other
31 correctional facility.

32 ~~(k)~~

33 (m) This section shall not be construed to alter the scope of
34 practice of any health care provider or authorize the delivery of
35 health care services in a setting, or in a manner, not otherwise
36 authorized by law.

37 (n) *On or before January 1, 2008, the State Department of*
38 *Health Services shall report to the Legislature the number and*
39 *type of services provided and the payments made related to the*

1 *application of store and forward telemedicine as a Medi-Cal*
2 *benefit.*

3 *(o) This section shall remain in effect only until January 1,*
4 *2009, and as of that date is repealed, unless a later enacted*
5 *statute, that is enacted before January 1, 2009, deletes or extends*
6 *that date.*

7 SEC. 2. Section 2290.5 is added to the Business and
8 Professions Code, to read:

9 2290.5. (a) (1) For the purposes of this section,
10 “telemedicine” means the practice of health care delivery,
11 diagnosis, consultation, treatment, transfer of medical data, and
12 education using interactive audio, video, or data
13 communications. Neither a telephone conversation nor an
14 electronic mail message between a health care practitioner and
15 patient constitutes “telemedicine” for purposes of this section.

16 (2) For purposes of this section, “interactive” means an audio,
17 video, or data communication involving a real time
18 (synchronous) or near real time (asynchronous) two-way transfer
19 of medical data and information.

20 (b) For the purposes of this section, “health care practitioner”
21 has the same meaning as “licentiate” as defined in paragraph (2)
22 of subdivision (a) of Section 805.

23 (c) Prior to the delivery of health care via telemedicine, the
24 health care practitioner who has ultimate authority over the care
25 or primary diagnosis of the patient shall obtain verbal and written
26 informed consent from the patient or the patient’s legal
27 representative. The informed consent procedure shall ensure that
28 at least all of the following information is given to the patient or
29 the patient’s legal representative verbally and in writing:

30 (1) The patient or the patient’s legal representative retains the
31 option to withhold or withdraw consent at any time without
32 affecting the right to future care or treatment nor risking the loss
33 or withdrawal of any program benefits to which the patient or the
34 patient’s legal representative would otherwise be entitled.

35 (2) A description of the potential risks, consequences, and
36 benefits of telemedicine.

37 (3) All existing confidentiality protections apply.

38 (4) All existing laws regarding patient access to medical
39 information and copies of medical records apply.

1 (5) Dissemination of any patient identifiable images or
2 information from the telemedicine interaction to researchers or
3 other entities shall not occur without the consent of the patient.

4 (d) A patient or the patient's legal representative shall sign a
5 written statement prior to the delivery of health care via
6 telemedicine, indicating that the patient or the patient's legal
7 representative understands the written information provided
8 pursuant to subdivision (a), and that this information has been
9 discussed with the health care practitioner, or his or her designee.

10 (e) The written consent statement signed by the patient or the
11 patient's legal representative shall become part of the patient's
12 medical record.

13 (f) The failure of a health care practitioner to comply with this
14 section shall constitute unprofessional conduct. Section 2314
15 shall not apply to this section.

16 (g) All existing laws regarding surrogate decisionmaking shall
17 apply. For purposes of this section, "surrogate decisionmaking"
18 means any decision made in the practice of medicine by a parent
19 or legal representative for a minor or an incapacitated or
20 incompetent individual.

21 (h) Except as provided in paragraph (3) of subdivision (c), this
22 section shall not apply when the patient is not directly involved
23 in the telemedicine interaction, for example when one health care
24 practitioner consults with another health care practitioner.

25 (i) This section shall not apply in an emergency situation in
26 which a patient is unable to give informed consent and the
27 representative of that patient is not available in a timely manner.

28 (j) This section shall not apply to a patient under the
29 jurisdiction of the Department of Corrections or any other
30 correctional facility.

31 (k) This section shall not be construed to alter the scope of
32 practice of any health care provider or authorize the delivery of
33 health care services in a setting, or in a manner, not otherwise
34 authorized by law.

35 (l) This section shall become operative on January 1, 2009.

36 SEC. 3. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the

- 1 penalty for a crime or infraction, within the meaning of Section
- 2 17556 of the Government Code, or changes the definition of a
- 3 crime within the meaning of Section 6 of Article XIII B of the
- 4 California Constitution.

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